

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERVAIS (KEN) NGOMBWA,

Defendant.

No. 14-CR-123-LRR

ORDER

I. INTRODUCTION

The matter before the court is Defendant Gervais Ngombwa’s Amended Objections (“Objections”) (docket no. 35) to United States Chief Magistrate Judge Jon S. Scoles’s Order Denying Motion to Appoint Counsel (“Order”) (docket no. 26), which denied Defendant’s Motion to Appoint Out of District Counsel (“Motion”) (docket no. 21).

II. RELEVANT PROCEDURAL BACKGROUND

On October 30, 2014, a grand jury returned a four-count Indictment (docket no. 2) against Defendant. On February 25, 2015, Defendant filed the Motion. On March 2, 2015, the government filed a Resistance (docket no. 25). On March 3, 2015, Judge Scoles entered the Order. On March 19, 2015, Defendant filed his Objections. On March 20, 2015, the court held a hearing (“Hearing”) on the Objections. *See* March 20, 2015 Minute Entry (docket no. 37). The Objections are fully submitted and ready for decision.

III. STANDARD OF REVIEW

Under Federal Rule of Criminal Procedure 59(a),

A district judge may refer to a magistrate judge for determination any matter that does not dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings and, when appropriate, enter on the record an oral or written order stating that determination. A party may serve and file objections to the order within 14 days

after being served with a copy of a written order or after the oral order is stated on the record, or at some other time the court sets. The district judge must consider timely objections and modify or set aside any part of an order that is contrary to law or clearly erroneous.

Fed. R. Crim. P. 59(a). A finding is clearly erroneous when “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Gateway, Inc. v. Companion Prods., Inc.*, 384 F.3d 503, 507-08 (8th Cir. 2004) (citation omitted) (internal quotation marks omitted). “To be clearly erroneous, a decision must strike [the reviewing court] as more than just maybe or probably wrong; it must . . . strike the [the reviewing court] as wrong with the force of a five-week-old, unrefrigerated dead fish.” *In re Papio Keno Club, Inc.*, 262 F.3d 725, 729 (8th Cir. 2001) (citation omitted) (internal quotation marks omitted). In addition, under Federal Rule of Criminal Procedure 59(a), a district court judge retains the authority to review de novo any aspect of a magistrate judge’s ruling on a nondispositive matter in a criminal case, even if neither party files a timely objection. See Fed. R. Crim. P. 59 Advisory Committee’s Note. Accordingly, while the court is only required to review under the clearly erroneous and contrary to law standards, the court nonetheless reviews the Objections to the Order de novo.

IV. ANALYSIS

In the Objections, Defendant objects to Judge Scoles’s findings that (1) “while the facts underlying the charges are unusual, the legal issues raised by the indictment are not complex,” (2) Defendant “has two highly competent and experienced federal public defenders representing him” and thus “the appointment of a third attorney is [not] required ‘in the interest of justice’” and (3) if “appointment of a third lawyer was necessary in the interest of justice, it would not appoint an out-of-district attorney.” Objections at 1-2. After reviewing the record and evidence from the Hearing, the court agrees with Judge Scoles’s that this case is not “an extremely difficult case where the court finds it in the

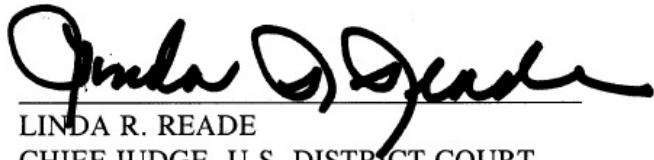
interest of justice to appoint” a third attorney. *Guide to Judicial Policy*, Vol. 7, Pt. A, Chapter 2, § 230.53.20(a). Thus, the court finds no basis to disturb Judge Scoles’s findings.

V. CONCLUSION

In light of the foregoing, Defendant Gervais Ngombwa’s Amended Objections (docket no. 35) to United States Chief Magistrate Judge Jon S. Scoles’s Order Denying Motion to Appoint Counsel is **OVERRULED**.

IT IS SO ORDERED.

DATED this 25th day of March, 2015.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA